

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

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In the Matter of)

OCT 22 2002

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 Amendment of Section 73.202(b)
 Table of Allotments
 FM Broadcast Stations
 (Chillicothe, Dublin, Hillsboro
 and Marion, Ohio))

MB Docket No. 02-266
 RM - I0557

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division
 Media Bureau

MOTION FOR LEAVE TO FILE LATE COMMENTS

Citicasters Licenses, Inc., licensee of Station WMRN-FM, Marion, Ohio, and Citicasters Company, licensee of Station WSRW-FM, Hillsboro, Ohio ("Joint Parties"), by their counsel, hereby request leave to file their Comments to the Notice of Proposed Rule Making, 17 FCC Rcd 16345 (2002), in the above-captioned proceeding one day late. The Comments which are being filed separately merely restate the Joint Parties expression of interest in applying for and constructing modified facilities for two new communities of license. The Comments had been prepared well in advance and were ready for filing on October 21, 2002, the due date. However, the law firm that represents the Joint Parties failed to deliver the Comments on time due to an inadvertent error.

There is a considerable body of case law that supports the notion that the Commission has discretion to accept late filed Comments where there is no adverse impact or any other proposal. See e.g., Willows, California, 11 FCC Rcd 9180 (1996); and Bagdad and Chino Valley, Arizona, 11 FCC Rcd 14450 (1996).¹ Of course, the Joint Parties do not know for

¹ The Commission also found no prejudice to opposing parties in the following cases: Havasut City, Arizona, 10 FCC Rcd 6522 (1995); Christiansted, Virgin Islands, 10 FCC

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certain at this time that there will not be any conflicting proposals. However, the Joint Parties are aware of several opposing Comments which were received by undersigned counsel prior to this filing.’ Nevertheless, assuming that no mutually exclusive proposals are filed, there should be no prejudice resulting to these opponents. The Joint Parties have merely restated their interest in their original proposal.

The opponents can not be prejudiced by the filing of an expression of interest because such a filing was reasonably expected. The lateness of the expression of interest should have had no impact on the substance of the opposition’s comments. More importantly, there is no public interest benefit in delaying action on the merits in this case. Again, assuming that no conflicting proposals are filed, the Commission will accomplish nothing by dismissing the Joint Parties proposal except to delay dealing with the merits because a dismissal will cause the Joint Parties to refile their petition. The opponents would similarly be expected to refile their opposition comments. The absence of prejudice to opposing parties is exactly the reason that the Commission staff accepted a late filed expression of interest in Willows, California, supra. In that case the Chief, Allocations Branch stated at note 3, “inasmuch as the late filed comments consist of the petitioner’s continuing expression of interest only, and in consideration of our ultimate analysis of the opposing comments, infra, the acceptance of petitioner’s comments can be accommodated without prejudicing any other pending request. Therefore we will consider the

Rcd 8078 (1995); Horseshoe Beach and Otter Creek, Florida, 13 FCC Rcd 12703 (1998); Weaverville, California, 12 **FCC** Rcd 2965 (1997); Gosnell and Osceola, Arkansas, Germantown and Ripley, Tennessee, 6 FCC Rcd 4579 (1991); Patterson, California, 7 FCC Rcd 1719 (1992); Keokuk and Washington, Iowa, 6 FCC Rcd 364 (1991); Weston and Webster Springs, West Virginia, 5 FCC Rcd 1006 (1990); Vancouver, Washington, Coos Bay and Corvallis, Oregon, 4 FCC Rcd 839 (1989).

² One of these filings, by Sandyworld, Inc., requests an extension of time to file Comments. The Joint Parties have no objection to this request for an extension of time.

late-filed comments to enable us to resolve this proceeding on the basis of a complete record.”

The Bagdad and Chino Valley, Arizona, supra, case reaches the same conclusion.

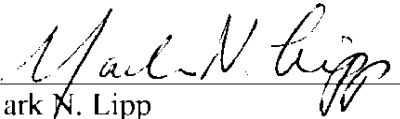
As in those cases, the Commission staff can consider each of the issues raised in the opposing comments and resolve this case based on a complete record. No purpose would be served by dismissing the Joint Parties’ proposal without consideration, assuming no conflicting proposals are tiled, except to delay consideration of the same proposal and the same issues raised by the opponents in a retiling.

Accordingly, the Joint Parties urge the Commission to accept the late filed “Joint Comments” of the Joint Parties.

Respectfully submitted,

CITICASTERS LICENSES, INC.
CITICASTERS COMPANY

By:



Mark N. Lipp
Shook!, Hardy & Bacon LLP
600 14th Street, NW
Suite 800
Washington, DC 20005
(202) 783-8400

Their Counsel

October 22, 2002

CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, L.L.P., do hereby certify that I have on this 22nd day of October, 2002 caused to be mailed by first class mail, postage prepaid, copies of the foregoing "Motion for Leave to File Late Comments" to the following:

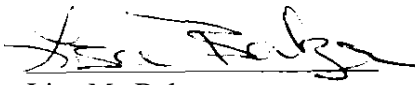
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Mr. R. Barthen Gorman
Federal Communications Commission
Mass Media Bureau
445 12th Street, SW
Room 3-A224
Washington, DC 20554

Jerrold Miller, Esq.
Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033
(Counsel to Sandyworld, Inc.)

Steven A. Lerman, Esq.
Dennis P. Corbett, Esq.
Jean W. Benz, Esq.
Leventhal Senter & Lerman, PLLC
2000 K Street, NW
Suite 600
Washington, DC 20006
(Counsel to Infinity Broadcasting Operations, Inc.)

Lauren A. Colby, Esq.
10 E. Fourth Street
P.O. Box 113
Frederick, MD 21705-0113
(Counsel for the Committee for Competitive Columbus Radio)


Lisa M. Balzer

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